**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**

**CIVIL APPELLATE JURISDICTION**

**SECOND APPEAL NO.590 OF 1988**

Rajubai w/o. Atmaram Dagade ...Appellant

Vs.

Dashrath Shripati Bhusare ...Respondent

Shri A.A.Kumbhakoni for the Appellant
Shri M.R.Katikar for the Respondent No.1
Shri Nitin Jamdar for Respondent No.2.

**CORAM: A.S.OKA, J.**
**DATED: MARCH 23,2005.**

**ORAL JUDGMENT:**

1. The Second Appeal was admitted on 21st December 1988 by passing the following order :

> . "Mr.Shah is heard.
>
> . Appeal admitted. The substantial question of law being whether the Courts below erred in affirming the genuiness enforceability of the agreement set up by the Respondent in the light of the facts and circumstances of the case."

2. I have heard the Counsel appearing for the parties on the substantial question of law as framed. The Appellant is the original Defendant and the Respondent No.1 is the original Plaintiff. The Respondent No.2 has been impleaded as party in this Appeal as per order dated 27th April 2001 passed in Civil Application No.2880 of 1999.

3. The case of the Respondent No.1 is that the Appellant

executed an agreement for sale dated 2nd June 1975 in his favour. The condition in the agreement was that the Appellant was to obtain permission to sell the suit land from the Sub Divisional Officer and the sale deed was to be executed within two months from the date of obtaining permission. According to the case of the Respondent No.1, the possession was delivered even on the same day but the said fact was not mentioned in the agreement as the Sub Divisional Officer had not granted permission. As the Appellant avoided to execute the sale deed, the Respondent-Plaintiff issued a notice dated 22nd February 1980 calling upon the Appellant to execute the sale deed. Before issuing notice, provisions of the Bombay Prevention of Fragmentation and Consolidation of Holdings Act, 1947 were amended and therefore the permission was no longer required. According to the Respondent No.1, as the Appellant obstructed his possession, he filed a suit for specific performance of the suit agreement dated 2nd June 1975 and in the alternative for refund of amount of Rs.2000/- as earnest money and for Rs.2000/- towards damages.

4. The suit was resisted by the Appellant by disputing the execution of the suit agreement. It is also contended that the documents relied upon by the Respondent No.1 might have been got executed by him by practising deception on the Appellant. It is also contended that the Appellant has leased out the suit land to one Dnyandeo Kokate by accepting

four years rent and the respondent No.1 being the close relative of the Appellant got annoyed as he was desirous of acquiring the suit land by paying a meagre price. It is contended that the price of the suit land was Rs.20,000/- at the relevant time.

5. The Trial Court accepted that the suit agreement was executed and the Respondent No.1 was placed in possession on the basis of possession Receipt. An Appeal was preferred by the Appellant to the District court and the said Appeal has been dismissed.

6. The learned Counsel appearing for the Appellant submitted that considering the fact that the Appellant is a widow and the Respondent No.1 is her nephew, discretion under Section 20 of the Specific Relief Act, 1963 ought to have been exercised in favour of the Appellant. He submitted that the readiness and willingness to comply with the terms of the agreement is not established by the Respondent No.1 and he should have pleaded readiness and willingness till the date of institution of the suit. Though there was a dispute between the parties from the year 1979, the Respondent No.1 waited for a long time of two years for filing a suit for specific performance. He submitted that as the consideration in the agreement was meagre, the decree for specific performance ought not to have been passed. He submitted that no case was made out for grant of specific performance and in

the facts and circumstances of the case decree for refund of the consideration received by the Appellant ought to have been passed.

7. The Respondent No.2 claims to be a purchaser from the Appellant on the basis of the Sale Deed dated 26th February 1999. The learned Counsel appearing for the Respondent No.2 submitted that when the said Act of 1947 was amended in the year 1977, necessity of obtaining sale permission no longer remained in existence and therefore from the date on which the amendment was brought into force, sale ought to have been executed within a period of two months. He therefore submitted that the suit filed in the year 1981 was barred by Article 54 of the Limitation Act, 1963. He relied upon the Judgment of the Apex Court reported in (1990) 1 S.C.C. page No.104 (Ramzan vs. Hussaini) and submitted that the 'Date fixed for performance' in Article 54 need not be ascertainable on the basis of the contract and may be ascertainable on happening of certain contingent event specified in the contract. He, therefore, submitted that once the Act of 1947 was amended, the date of amendment will have to be treated as the relevant date from which the agreement should have been implemented within two months. The learned Counsel for Respondent No.1 supported the impugned Judgment and decree.

8. I have considered the rival submissions. In so far as

the first submission which is based on Section 20 of the Specific Relief Act, 1963 is concerned, it is a settled position of law that grant of relief of specific performance is discretionary. The discretion has been exercised against the Appellant by the Courts below. Perusal of the impugned Judgments show that for exercising the discretion in favour of the Respondent No.1, all relevant factors have been considered by the Courts below. In the Second Appeal under Section 100 of the Code of Civil Procedure, 1908 exercise of discretionary power cannot be interfered with when the Courts below have taken into consideration all the relevant facts and circumstances. The exercise of discretion is neither perverse nor arbitrary.

9. In so far as the submission regarding readiness and willingness of the Respondent No.1 in terms of Section 16 (c) of the said Act of 1963 is concerned, on this aspect also there are concurrent findings of the courts below. The Appellate Court has held that the Respondent No.1 made a request to the Appellant to make an application to the Sub Divisional Officer for obtaining permission. On the said application the Respondent No.1 had endorsed that he is ready to purchase the suit property. The earnest money of Rs.2000/- was paid by the Respondent No.1. The Appellate Court has accepted the case of the Respondent No.1 that he was all along requesting the Appellant to accept the balance consideration and execute the Sale Deed. The Courts below

have accepted the fact that the Respondent No.1 was put in possession on the basis of Kabje pavati (possession receipt). The Trial Court has also adverted to the evidence on record on the aspect of readiness and willingness. A reliance is placed on the application for permission made by the Appellant in the office of Sub Divisional Officer. Considering all these aspects, the Courts below have held that the Respondent No.1 has established the readiness and willingness to perform his part of the contract.

10. In so far as the plea of bar of limitation is concerned, there is an elaborate discussion by the Appellate Court. The Appellate Court has noted that condition in the statute to obtain sale permission was relaxed by virtue of amendment to the statute. The sale deed was to be executed within a period of two months from the date of obtaining permission. For the purpose of limitation, date on which law was amended cannot be construed as the date of granting permission. There is nothing on record to show that parties intended to make the said time of two months as essence of the contract. Therefore, the contention raised by the respondent No.2 that the first part of Article 54 will have the application is not acceptable. The Appellate Court rightly held that the second part of the Article 54 will apply and period of limitation will start from the date when the Appellant has refused to perform his part of contract. The finding of fact recorded is that by reply to the notice issued by the Respondent No.1

on 22nd January 1981, the Appellant unequivovocally refused to execute the sale deed and that is the starting point of limitation and that is the reason why the suit filed in the year 1981 is within limitation.

11. A submission is also made that the consideration fixed was very meagre. Even assuming that the said contention is factually correct that by itself is not a ground for declining the exercise of the discretion in a suit for specific performance.

12. In view of discussion as above, there is no merit in the Appeal. Second Appeal is dismissed with no order as to costs.

13. Parties to act upon an authenticated copy of this order.

**Judge.**